IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT:	Jon P. Hassell	ART UNIT:	3727
SERIAL NO.:	10/677,745	EXAMINER:	Lhymn, Eugene
FILED:	10/01/2003	ATTORNEY DOCKET NO. 2096PUS; 67080-147	
FOR:	**COLLAPSIBLE CONTAINER**		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Subsequent to the Notice of Appeal express mailed to the Patent and Trademark Office on April 5, 2007, Appellant now submits its Brief. Fees in the amount of $500.00 for the appeal brief fee should be charged to Deposit Account No. 50-1984 in the name of Rehrig Pacific Company. If any further fees are necessary, you are hereby authorized to charge the deposit account above.

REAL PARTY IN INTEREST

The real party in interest Rehrig Pacific Company is the Assignee of all right and title in this Application from the inventors, and this assignment was recorded on January 8, 2004 at Reel/Frame 014244/0551.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-24 are presently pending in the application and stand finally rejected. The rejection of claims 1-24 is being appealed.

STATUS OF AMENDMENTS

There were no unentered amendments after final.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Collapsible containers may be formed of various materials. Many materials presently used, such as paperboard or cardboard, are typically one-piece die-cut members having multiple fold lines by which the container panels are folded. While such containers may be functional, the fold lines may not provide the strength or the durability required for certain applications. Moreover, many of these designs have panels which fold outwardly when not assembled, thereby requiring a larger surface area for storage when not in use. Further, such containers may be used in a display setting, such as in a grocery store. However, present collapsible containers may not provide the retail visibility into a container that may be desired by the manufacturers of the goods stored in the container.

Claim 1 recites a collapsible container 10 having a base member 12, an end wall 18 pivotably attached to the base member 12 by a hinge mechanism for allowing the end wall 18 to pivotably move about an end axis between a folded position and an upright position. (Page 3, lines 1-7; Figures 1 and 2, reproduced below).

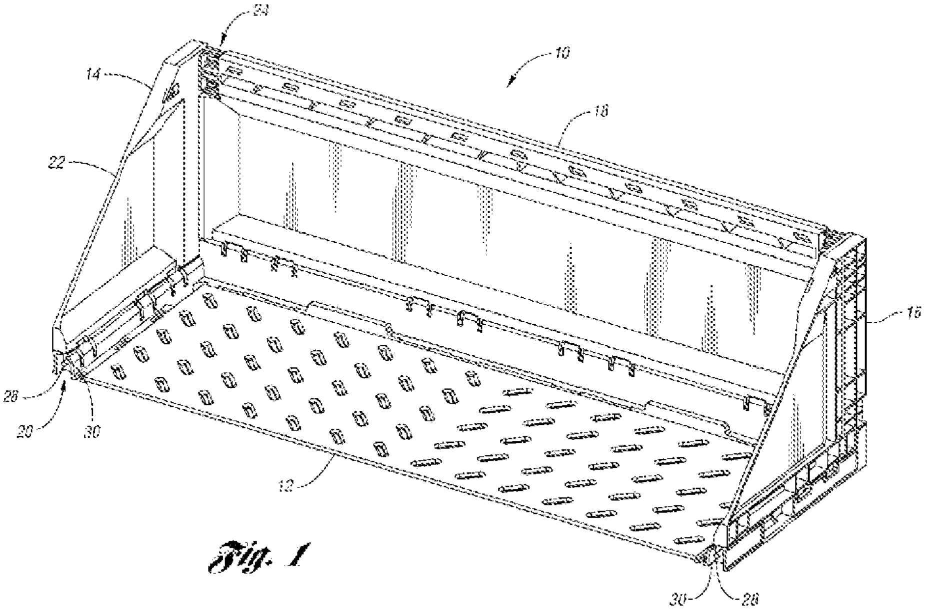


Fig. 1

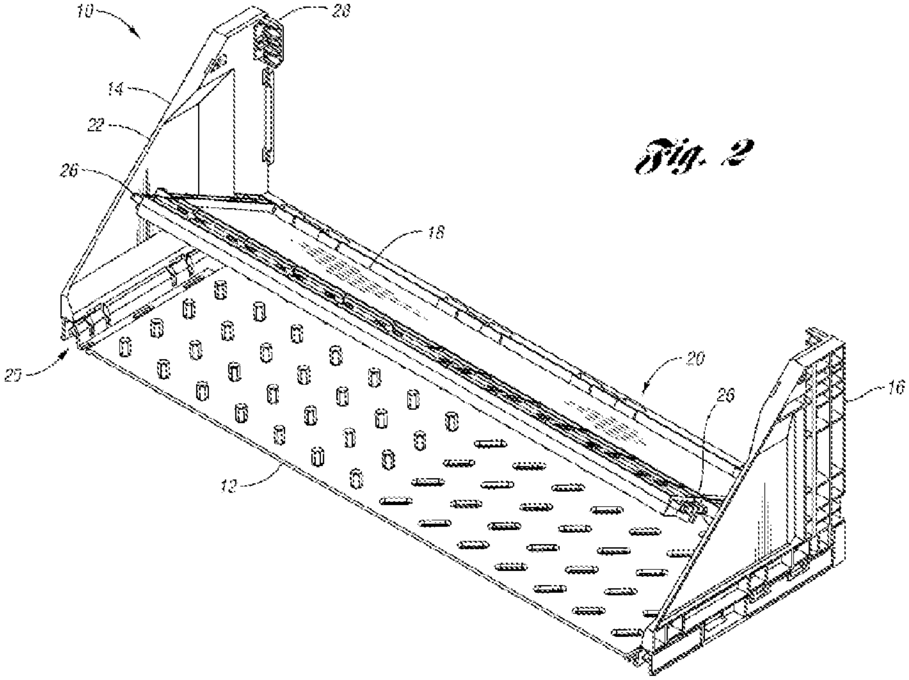


Fig. 2

The end wall 18 has lateral edges with latch members 26 formed therein. (Page 3, lines 22-25; Figures 1 and 2). A pair of opposed side walls 14, 16 are each pivotably attached to the base member 12 by a hinge mechanism for allowing the side walls to pivotably move about side axes between a folded position and an upright position. (Page 3, lines 2-5; Figures 1 and 2). Each of the side walls 14, 16 includes an upper surface which is substantially beveled along its length, and a rear flanged portion having a latch receiver 28 formed therein for receiving a respective latch member 26 and for securing the container 10 in an assembled position. (Page 3, lines 22-24; Figures 1 and 2). The side axes are disposed in a plane not containing the end axis. (Figures 1 and 2).

Claim 2 recites a collapsible container 10 having a base member 12 having an upper support surface and a back wall 18 pivotally attached to the base member 12 and movable about a back axis between a folded position and an upright position. (Page 3, lines 1-7; Figures 1 and 2). At least one sidewall 14, 16 is pivotally attached to the base member 12 and movable about a side axis between a folded position and an upright position. (Page 3, lines 2-5; Figures 1 and 2). The sidewall 14, 16 includes an oblique upper surface and is connectable to the back wall 18 when in the upright position. (Page 3, lines 22-24; Figures 1 and 2). The back axis and the side axis are parallel to the upper support surface of the base member 12. (Figures 1 and 2).

Claim 12 recites a collapsible container 10 having a base member 12 defined between front and rear edges and between opposite side edges, the base member including a single wall having an upper surface for supporting objects thereon and a lower surface on which the collapsible container rests. (Page 3, lines 1-3; Figures 1 and 2). The container 10 includes a back wall 18 pivotally attached to the base member 12 proximate the rear edge. (Page 3, lines 1-7; Figures 1 and 2). The container 10 includes a first sidewall 14 and a second sidewall 16 pivotally attached to the base member 12 proximate the side edges. (Page 3, lines 2-5; Figures 1 and 2). The back wall 18, the first sidewall 14, and the second sidewall 16 are movable between an upright position and a folded position. (Page 3, lines 4-5; Figures 1 and 2). The first sidewall 14 and the second sidewall 16 are spaced a distance apart such that the first sidewall 14, the second sidewall 16 and the front edge of the base member 12 define an opening opposite the back wall 18. (Figures 1 and 2).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant seeks review of the following ground of rejection:

Claims 1-24 have been rejected as obvious over Pigott (6,305,566) in view of Gyenge (4,674,647).

ARGUMENTS

Claims 1-24 have been rejected as obvious over Pigott (6,305,566) in view of Gyenge (4,674,647).

Independent Claim 1

Claim 1 recites that the axes of the side walls are in a plane that does not contain the axis of the end wall. In Pigott, the three walls have axes that are in the same plane, as the Examiner admits. In Gyenge, the walls have axes in different planes. The Examiner suggests that the motivation for moving the axes in Pigott would be to "provide an alternate embodiment." This is not a valid motivation. Even if providing an alternate embodiment were theoretically valid motivation, then it must not be obvious to move the axes, since Pigott did not provide such an alternate embodiment. Nor does Gyenge teach moving axes as "an alternate embodiment," since all of the embodiments in

Gyenge have the axes in different planes. Therefore, claim 1 is not obvious.

Dependent Claim 21

Claim 21 depends from claim 1 and further recites that the plane containing the side axes is parallel to the base member. In Pigott, the upper surface of the base is sloped toward the back wall. The purpose of Pigott is for carrying mirrors or other similar objects, so the base is sloped toward the back wall. (col. 5, lines 4-10). Therefore, it would not be obvious to modify Pigott to meet claim 21, as that would make it less suitable for its intended purpose. Again, "providing an alternate embodiment" is not a valid motivation, and no such motivation exists in the cited references or anywhere else. Therefore, claim 21 is independently patentable.

Dependent Claim 22

Claim 22 depends from claim 1 and further recites that the base member includes an upper surface for supporting objects thereon and a lower surface on which the collapsible container would contact a floor, wherein the base member is a single thickness wall. In Pigott, the base has feet that rest on the floor and support the base above the floor. Pigott is a large pallet for containing large objects that can be lifted by a forklift. (col. 3, lines 23-30). The Examiner suggests that the bottom of the feet are the lower surface; however, this is not the lower surface of a single wall, as claimed ("wherein the base member is a single thickness wall"). Therefore, claim 22 is independently patentable.

Dependent Claim 23

Claim 23 depends from claim 1 and further recites that the latch members and latch receivers form knock-down latches, that can be released upon the application of sufficient force on at least one of the end wall and the side walls. Pigott's latches are shown in Figures 8-10 (reproduced below):

FIG. 8

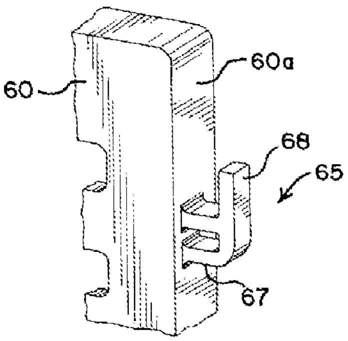


FIG. 9

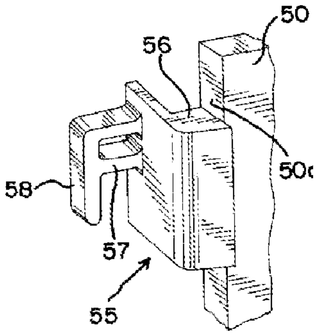
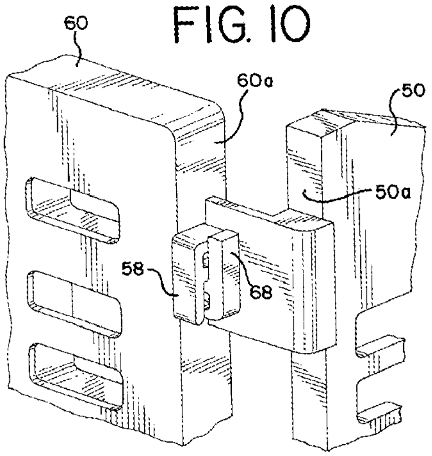


FIG. 10



Clearly, these latches could not be "knock down" latches, as that term is used in the art and defined in the claim. In fact Pigott states that the latches must be released by lifting the walls 50. (col. 4, lines 52-56). Therefore, claim 23 is independently patentable.

Independent Claim 2

Claim 2 recites that the back axis and the side axis are parallel to the upper support surface of the base member. In Pigott, the upper surface of the base is sloped toward the center wall. The purpose of Pigott is for carrying mirrors or other similar objects, so the base is sloped toward the back wall. (col. 5, lines 4-10). In contrast, the present invention is intended for smaller, grocery store items. (See Background of the Invention). Therefore, it would not be obvious to modify Pigott to meet claim 2, as that would make it less suitable for its intended purpose. Again, "providing an alternate embodiment" is not a valid motivation, and no such motivation exists in the cited references or anywhere else.

Independent Claim 12

Claim 12 recites that the base member includes a single wall having an upper surface for supporting objects thereon and a lower surface on which the collapsible container rests. In Pigott, the base has feet that rest on the floor and support the base above the floor. Pigott is a large pallet for containing large objects that can be lifted by a forklift. (col. 3, lines 23-30). The Examiner offers no reason for modifying Pigott to include a single wall with an upper surface for supporting objects and a lower surface on which the container rests. Additionally, Pigott would be unsuitable for its intended purpose if it were so modified, since it must be liftable by a forklift.

Dependent Claim 24

Claim 24 depends from claim 12 and further recites knock-down latches releasably connecting the sidewalls to the back wall, the knock-down latches being releasable upon the application of sufficient force on the back wall toward the base member. For the reasons explained above with respect to claim 23, claim 24 is independently patentable.

CLOSING

For the reasons set forth above, the final rejection of all claims should be reversed.

Respectfully submitted,

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Dated: July 5, 2007

CLAIMS APPENDIX

1. A collapsible container comprises:

a base member;

an end wall pivotably attached to the base member by a hinge mechanism for allowing the end wall to pivotably move about an end axis between a folded position and an upright position, the end wall having lateral edges with latch members formed therein; and

a pair of opposed side walls each pivotably attached to the base member by a hinge mechanism for allowing the side walls to pivotably move about side axes between a folded position and an upright position, wherein each of the side walls includes an upper surface which is substantially beveled along its length, and a rear flanged portion having a latch receiver formed therein for receiving a respective latch member and for securing the container in an assembled position, wherein the side axes are disposed in a plane not containing the end axis.

2. A collapsible container comprising:

a base member having an upper support surface;

a back wall pivotally attached to the base member and movable about a back axis between a folded position and an upright position; and

at least one sidewall pivotally attached to the base member and movable about a side axis between a folded position and an upright position, wherein the sidewall includes an oblique upper surface and is connectable to the back wall when in the upright position, wherein the back axis and the side axis are parallel to the upper support surface of the base member.

3. The collapsible container as recited in claim 2, wherein the at least one sidewall comprises a first sidewall and a second sidewall.

4. The collapsible container as recited in claim 2, including a latch member on one of the back wall and the at least one sidewall, and a latch receiver disposed the other of the back wall and the at least one sidewall.

5. The collapsible container as recited in claim 4, wherein the at least one sidewall abuts an edge of the back wall when in the upright position.

6. The collapsible container as recited in claim 5, wherein the latch member is disposed on the edge of the back wall.

7. The collapsible container as recited in claim 2, wherein the back wall, and the at least one sidewall are disposed within a perimeter of the base member when in the folded position.

8. The collapsible container as recited in claim 2, wherein one of the back wall and the base member include a hinge member and the other of the back wall and the base member include a hinge receiver.

9. The collapsible container as recited in claim 8, wherein the hinge receiver is disposed along a periphery of the base member.

10. The collapsible container as recited in claim 2, wherein the oblique upper surface comprises a 45-degree angle.

11. The collapsible container as recited in claim 2, wherein the back wall comprises a contoured surface having a first thickness about a periphery of the back wall and a second thickness different than the first thickness within the periphery of the sidewall, and the at least one sidewall comprises a contoured surface having a third thickness at least partially about a periphery of the at least one sidewall and a fourth thickness different than the third thickness spaced apart from the periphery of the at least one sidewall.

12. A collapsible container comprising:

a base member defined between front and rear edges and between opposite side edges, the base member including a single wall having an upper surface for supporting objects thereon and a lower surface on which the collapsible container rests;

a back wall pivotally attached to the base member proximate the rear edge; and

a first sidewall and a second sidewall pivotally attached to the base member proximate the side edges, wherein the back wall, the first sidewall, and the second sidewall are movable between an upright position and a folded position, and the first sidewall and the second sidewall are spaced a distance apart such that the first sidewall, the second sidewall and the front edge of the base member define an opening opposite the back wall.

13. The collapsible container as recited in claim 12, wherein in the folded position each of the back wall, the first sidewall, and the second sidewall are disposed within a perimeter of the base member.

14. The collapsible container as recited in claim 12, wherein the back wall latches to each of the first sidewall and the second sidewall when in the upright position.

15. The collapsible container as recited in claim 12, wherein the first sidewall and the second sidewall each include an oblique upper surface.

16. The collapsible container as recited in claim 12, wherein the first sidewall is tapered vertically when in the upright position.

17. The collapsible container as recited in claim 16, wherein an upper edge of the first sidewall is tapered downwardly from a lateral edge adjacent the back wall toward an opposite lateral edge.

18. The collapsible container as recited in claim 17, wherein an upper edge of the second sidewall is tapered downwardly from a lateral edge adjacent the back wall toward an opposite lateral edge.

19. The collapsible container as recited in claim 12, wherein the back wall comprises a contoured surface having a first thickness about a periphery of the back wall and a second thickness different than the first thickness within the periphery of the sidewall.

20. The collapsible container as recited in claim 19 wherein the first sidewall comprises a contoured surface having a third thickness at least partially about a periphery of the first sidewall and a fourth thickness different than the third thickness spaced apart from the periphery of the first sidewall.

21. The collapsible container of claim 1 wherein the plane containing the side axes is parallel to the base member.

22. The collapsible container of claim 1 wherein the base member includes an upper surface for supporting objects thereon and a lower surface on which the collapsible container would contact a floor, wherein the base member is a single thickness wall.

23. The collapsible container of claim 1 wherein the latch members and latch receivers form knock-down latches, that can be released upon the application of sufficient force on at least one of the end wall and the side walls.

24. The collapsible container of claim 12 further including knock-down latches releasably connecting the sidewalls to the back wall, the knock-down latches being releasable upon the application of sufficient force on the back wall toward the base member.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.